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VIA ECF

Ms. Molly C. Dwyer, Clerk
United States Court of Appeals
for the Ninth Circuit
95 - 7th Street
San Francisco, CA 94103

Re: *Dent v. Nat'l Football League*, Appeal No. 15-15143
Fed. R. App. P. 28(j) Letter Regarding *Alaska Airlines Inc. v. Schurke*, No. 13-35574, 2018 WL 3636431,--- F.3d --- (9th Cir. Aug. 1, 2018) (*en banc*)

Dear Ms. Dwyer:

Pursuant to Fed. R. App. P. 28(j), Plaintiffs submit for the panel's consideration this Court's *en banc* opinion in *Alaska Airlines*, which holds that "LMRA § 301[] federal preemption extends no further than necessary to preserve the role of grievance and arbitration, and the application of federal labor law, in resolving *CBA disputes*. That a state law cause of action is conditioned on some term or condition of employment that was collectively bargained, rather than unilaterally established by the employer, does not itself create a CBA dispute." 2018 WL 3636431, at *4 (emphasis in original).

Alaska Airlines is dispositive of the NFL's fundamental argument on appeal: that the Plaintiffs' state-law claims are preempted because there is a "need to interpret the numerous CBA provisions that address player medical care, including those that allocate rights and responsibilities for such care between and among teams, team doctors and trainers, and the players themselves." NFL Br. at 3. *Alaska Airlines* thoroughly analyzed the nature of "limited [LMRA] preemption," *id.* at *6, emphasizing that "Congress did not intend to preempt state law claims simply because they in some respect implicate CBA provisions, make reference to a CBA-defined right, or [even] create a state law cause of action factually 'parallel' to a grievable claim." *Id.* at *7 (internal citations omitted). "[C]laims are not preempted…if they just refer to a CBA-defined right, rely in part on a CBA's terms of employment, run parallel to a CBA violation, or invite use of the CBA as a defense." *Id.* at *8 (internal citations omitted).

Moreover, "'[i]nterpretation' is construed narrowly; 'it means something more than "consider," "refer to," or "apply."'" *Id.* (citation omitted); *see also id.* at *12. Thus, "claims are

only preempted to the extent there is an active dispute over 'the meaning of contract terms.'" *Id.* at *8 (citation omitted). Critically, "[t]he fact that 'a CBA provides a remedy or duty related to the situation that is *also* directly regulated by a non-negotiable state law does not mean the employee is limited to a claim based on the CBA.'" *Id.* at *13 (emphasis in original; citation omitted).

Very truly yours,

s/Stuart A. Davidson

STUART A. DAVIDSON

SAD:jd

cc: All Counsel of Record via ECF

This letter contains 350 words in compliance with Fed. R. App. P. 28(j).